

**Initiative 502 - Producer License Rules:
Comments to Washington State Liquor Control Board**
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Prevention, Treatment, and Public Health Considerations



CHILDREN'S ALLIANCE

Jon Gould, Deputy Director

SAMA

SCIENCE AND
MANAGEMENT
of ADDICTIONS

Frank Couch, Executive Director



Elaine Ishihara, Director



INNOVATIVE PROGRAMS RESEARCH GROUP

UNIVERSITY of WASHINGTON
School of Social Work

Roger Roffman, Professor Emeritus
UW School of Social Work



Alison Holcomb, Drug Policy Director

Mike Graham-Squire

Mark Cooke, Policy Advocate

Gary Hothi, CDP, MSWc

Introduction and Overview

In collaboration with the ACLU of Washington, organizational and individual members of Washington State’s substance abuse prevention, treatment, and public health communities provide the following comments for consideration during the development of draft rules for marijuana producers to be licensed under Initiative 502 (“I-502”).¹

The Initiative’s Public Health Features Must Be Fully Implemented. Our priority is to ensure that the public health features of I-502 are implemented fully and that the public is informed about the importance of emphasizing drug education, prevention, and increased availability of treatment – coupled with robust monitoring, enforcement, and evaluation – as core components of this major shift in marijuana policy. The following are examples of how the public’s health will be served:

- **Limited Quantities of Marijuana That May Be Produced.** Section 10 of I-502, now codified at RCW 69.50.345, calls on the Liquor Control Board (“Board”) to determine the maximum amounts of marijuana licensees may produce, taking into consideration the provision of “adequate access ... to discourage purchases from the illegal market.” See subparagraphs (3) and (6)(b). The goal is to meet current demand, not to promote increased marijuana use.
- **Advertising Restrictions.** RCW 69.50.345(9) calls for advertising restrictions and requirements that minimize marketing to youth and include medically and scientifically accurate information about the health and safety risks posed by marijuana use.
- **Security and Safety.** RCW 69.50.345(6)(a) requires the Board to balance “security and safety issues” against “economies of scale and their impact on licensees’ ability to both comply with regulatory requirements and undercut illegal prices.”
- **Impact Evaluations.** Section 30, now codified at RCW 69.50.550, requires cost-benefit evaluations of the impacts of implementation of I-502 – including impacts on public health, and youth and adult rates of marijuana use and dependence.

¹ The organizations, coalitions, and individuals that created this document come from diverse backgrounds and do not universally share the same beliefs about marijuana policy. Some do not support the legalization and regulation of marijuana. This document was drafted in a forward-looking manner and is not intended to revisit the underlying debate of whether it was wise to pass I-502 in the first place. All signatories agree that I-502’s public health components should be implemented fully and fairly.

The Board's Rules Should Promote Achievement of Specific Public Health Goals.

The public health provisions in I-502 offer a foundation for producing positive outcomes for individuals and the community. We suggest these outcomes can include, but need not be limited to, the following:

- **Preventing Initiation of Use at an Early Age.** Initiation of marijuana use at an early age multiplies the risk of developing problematic use and dependence. Preventing marijuana initiation prior to age 18 is the first priority, and preventing initiation prior to age 21 is second.
- **Preventing School Failure.** Marijuana use at an early age may contribute to failing grades and drop out among middle school and high school students.
- **Reducing Marijuana Use Disorders.** Effective regulation of marijuana's availability, advertisement, and labeling can support a reduction in the percentage of marijuana users meeting diagnostic criteria for marijuana use disorder.
- **Increasing Treatment Engagement by Those Needing Help.** Effective regulation of marijuana's advertisement and labeling should include rules that lead to a higher percentage of individuals who meet diagnostic criteria for marijuana use disorder seeking counseling and treatment. To that end, the Board should require that all labels include information on how to access the "marijuana use public health hotline" that will be created by the Department of Health per RCW 69.50.540 (5)(b)(i). Capacity for marijuana treatment should also be expanded and integrated with Washington's implementation of the Affordable Care Act.
- **Increasing Road Safety.** Advertising and labeling rules can support other provisions in I-502 designed to increase driver awareness of the risks of marijuana impairment and reduce marijuana-related vehicle accidents.
- **Educating the Public.** An increase in the public's accurate knowledge of marijuana's effects on health, cognition, and behavior will support all of the above-described positive public health outcomes.

Monitoring Outcomes and Making Adjustments Are Fundamental Components of I-502. The Washington State Institute for Public Policy will conduct a series of evaluations on the impacts of I-502 in 2015, 2017, 2022, and 2032. The findings of these evaluations will let the public know whether, and to what extent, implementation of I-502 has produced positive public health outcomes. The findings will also provide legislators and the Board solid information on which to base adjustments to the law or regulations.

The Science of Alcohol and Tobacco Prevention Offers Important Guidance. As the Board develops rules for marijuana producers, we urge that public health is kept at the forefront of considerations. As we've seen with promotional campaigns such as R.J.

Reynolds’ “Joe Camel” and the emergence of alcoholic “energy drinks” such as Four Loko, we must recognize that commercial interests can diverge from public health best practices.

It is important that the rules for I-502 incorporate lessons learned from our experiences with alcohol and tobacco. We urge the Board to make use of the leading researchers on alcohol and tobacco policy while formulating rules for legal marijuana.

Be Mindful of I-502’s Potential for Unintended Consequences for People of Color. A recent report that examined race and Washington’s criminal justice system determined that “the fact of racial and ethnic disproportionality in our criminal justice system is indisputable.”² It is also known that certain communities of color “experience a disproportionate burden of preventable disease, death, and disability compared with non-minorities.”³ In light of these realities, it is important that I-502 is implemented in a manner that seeks to move us closer to justice and equality. Racial disparities in law enforcement and public health outcomes hurt children, families, and communities.

Recommendations for Producer Rules

The following recommendations correspond to the issues the Board is required or has authority to address, as set forth in RCW 69.50.345 and RCW 69.50.342.

Recommendations Concerning the Scale of Marijuana Operations. The Board has been tasked with creating rules that will define the scale of commercial marijuana production in Washington. These rules will touch on a variety of policies including:

- the number of marijuana production sites,
- the amount of marijuana that may be produced at each location, and
- the security, equipment, and procedural requirements for operations.

The Board is also tasked with attempting to strike the right balance between, on the one hand, undercutting illegal market prices and, on the other, protecting youth and discouraging use. Compare, e.g., RCW 69.50.345(6)(b) and (c) with RCW 69.50.345(9)(b) and RCW 69.50.535(5).

- **Avoid Barriers to Smaller Commercial Operations.** In developing rules that impact the cost of establishing and operating as a licensed producer, the Board

² Task Force on Race and the Criminal Justice System, *Preliminary Report on Race and Washington’s Criminal Justice System*, available at (http://www.law.washington.edu/About/RaceTaskForce/preliminary_report_race_criminal_justice_030111.pdf).

³ Centers for Disease Control, Minority Health Webpage, available at (<http://www.cdc.gov/omhd/topic/minorityhealth.html>).

should avoid creating either economic barriers that prevent smaller commercial operations from entering the marketplace or incentives for big businesses to enter and dominate. No jurisdiction in the world has created an entirely legal commercial marijuana market. As a result, we should proceed carefully by starting small and preserving as much flexibility in the industry as possible to accommodate regulatory adjustments that may, with experience, prove necessary or advisable. Moreover, our experience with tobacco and alcohol cautions us that opening the door to large enterprises would run the risk of aggressive marketing and promotion of marijuana use generally, which increases the likelihood of increased marijuana use by all people, especially youth. A wiser approach would be to begin with smaller-scale operations that will have more limited capacity to advertise heavily.

- **Be Conservative Regarding the Volume of Marijuana Produced.** It is also important for the Board to be conservative in regards to how much marijuana is produced for sale in Washington’s retail stores. It will not be difficult to increase the production capacity of marijuana if initial estimates are too low. However, it will likely be challenging to shrink the marketplace if production amounts are too great. Excess marijuana capacity incentivizes promotion of use and diversion of product to youth and markets outside Washington. Surplus marijuana supplies would also push retail prices downward. As we know from our experience with alcohol and tobacco, low prices correspond to increased youth access and use. The Board should strive to find the right balance for the amounts of marijuana produced and should aspire to meet the “the goal of discouraging use while undercutting illegal market prices.” RCW 69.50.535(5).
- **Create a Simple, Cost-Efficient Tracking System and Require Licensees to Report Any Loss or Theft Promptly.** We are aware the Board is already taking a close look at tracking systems for the purpose of minimizing the risk of diversion of marijuana to other states. It is important that Washington does not become a supplier of marijuana to other states. Another important goal is the minimization of diversion to minors. The tracking system should include a simple process for licensees to report any theft or loss of stock on a timely basis so that appropriate corrective action can be taken quickly.
- **Products Must Be Accurately Labeled.** It is important that the public is well informed about the contents of marijuana products available for purchase. Although this issue is most relevant at the processor and retail levels, accurate and detailed labeling starts with production. The Board is tasked with creating labeling rules that address, at a minimum, “THC concentration” and “medically and scientifically accurate information about the health and safety risks posed by marijuana use.” Labels must also include the warning language set forth at RCW 69.04.480 (“may be habit forming”). See RCW 69.50.345(7).

During its consultation with the Department of Agriculture regarding the establishment of “classes” of marijuana, see RCW 69.50.345(8), the Board should

determine how best to include this information in the labeling rules for producers. Ultimately, the information – which addresses the “grade, condition, cannabinoid profile, THC concentration, or other qualitative measurements” of marijuana – needs to reach the public via the labeling rules for processors and retailers.

The Board should also consult with the Department of Health on whether it is appropriate to include information on how to access the “marijuana use public health hotline” that will be created per RCW 69.50.540 (5)(b)(i).

- **Rules for Advertising Should Be Guided by Youth Prevention Priorities.** The Board must establish rules that include “reasonable time, place, and manner restrictions and requirements regarding advertising of marijuana.” RCW 69.50.345(9). These rules must take into consideration the minimization of exposure to people under age twenty-one and they must include medically and scientifically accurate information about the health risks of marijuana. As we’ve seen in the alcohol and tobacco contexts, youth can be influenced by advertising, and usage rates will go up if the advertising is not regulated. For example, a national study found that:

Greater exposure to alcohol advertising contributes to an increase in drinking among underage youth. Specifically, for each additional ad a young person saw (above the monthly average of 23), he or she drank 1% more. For each additional dollar per capita spent on alcohol advertising in a local market (above the national average of \$6.80 per capita), young people drank 3% more.⁴

The Board should take a hard look at the evidence of what has and has not worked in the alcohol and tobacco advertising context and apply those lessons to the development of rules that will regulate producer branding, marketing, and advertising. A recent forum hosted by the RAND Corporation – “Developing Public Health Regulations for Marijuana: Lessons from Alcohol and Tobacco” – included a thoughtful discussion on the role of advertising policies.⁵ The presentations included a good summary of current tobacco advertising restrictions, many of which come from the 1998 tobacco Master Settlement Agreement and 2009 federal Family Smoking Prevention and Tobacco Control Act. These regulations include bans on a variety of forms of advertising, limit retail advertisements to black and white text only, and require more counter-marketing (messaging that counters the industry’s promotional advertising) at retail locations. Counter-marketing should include warnings about the health and

⁴ The Center on Alcohol Marketing and Youth, available at (http://www.camy.org/factsheets/sheets/Alcohol_Advertising_and_Youth.html) – citing to L.B. Snyder, F.F. Milici, M. Slater, H. Sun, and Y. Strizhakova, “Effects of Alcohol Advertising Exposure on Drinking Among Youth,” *Archives of Pediatrics and Adolescent Medicine* 160 (2006): 18-24.

⁵ RAND, “Conference and Webcast on Public Health Regulations for Marijuana,” video available at (<http://www.c-span.org/Events/RAND-Corp-Holds-Discussion-on-Public-Health-Effects-of-Marijuana/10737437957-1/>).

safety risks associated with marijuana use, including potential development of dependence.

With these types of restrictions in mind, the Board has a range of options that it can take for the advertising rules. A threshold consideration is the scope of the restrictions on marijuana advertising. This scope could theoretically range from an all-out ban on any type of advertising, or a temporary moratorium, to a tailored approach that specifies what advertising will be allowed, what advertising will be prohibited, or both.

From a public health perspective, the restrictions should be as strict as legally possible.⁶ The Board should also clearly document why the individual restrictions are necessary and provide supporting evidence.

No matter what approach is taken, the Board should keep in mind that minimizing exposure of people under twenty-one years of age to marijuana advertising is an explicit goal of I-502.

General Considerations

As the Liquor Control Board defines the regulatory structure of Washington's new legal marijuana market, it should keep some fundamental prevention and public health principles in mind. There is a solid base of research on what works for preventing problematic substance use in communities and for individuals; and for helping minimize the potential harms of marijuana use, by those who are already using. These lessons should be considered touchstones throughout I-502 rulemaking.

Understand the Basics on Prevention and Public Health. Prevention strategies come in a variety of forms and focus on different types of populations. Some are individual-focused and others are environmental-focused (i.e. community-level). As the Board drafts rules for implementing I-502, it is particularly important that it keep the environmental impacts of the new law in mind and incorporate environmental prevention strategies wherever possible:

Environmental strategies are used to change the context (environment) in which substance use and abuse occur. Environmental strategies

⁶ Some have suggested that since marijuana is still considered an illicit substance under federal law, the Board should consider instituting a moratorium on all marijuana advertising. In a few years, once an analysis of the implementation of I-502 is completed, and the impact on youth use rates *without* exposure to advertising is assessed, the Board could discuss replacing the moratorium with advertising regulations. However, in light of the strong likelihood that an all-out ban would be challenged as a violation of commercial speech rights under the First Amendment to the U.S. Constitution, Article I, section 5 of the Washington State Constitution, or both, the Board should consult with the Washington State Attorney General's Office on the most prudent course of action.

incorporate efforts aimed at changing or influencing community conditions, standards, institutions, structures, systems and policies.⁷

A good overview of individual-focused prevention programs can be found in a comprehensive publication titled *Preventing Mental, Emotional, and Behavioral Disorders Among Young People*, which was compiled by the National Research Council and Institute of Medicine.⁸ A list of additional resources on prevention practices can be found at the end of this document.

Prevention practices embody the principles of public health, defined as “the practice of preventing disease and promoting good health within groups of people, from small communities to entire countries.”⁹

Adopt an Overarching Framework for Prevention/Public Health Best Practices.

Because the fields of prevention and public health touch on so many different policy issues, it can be helpful to rely on an overarching framework when considering these topics. One such framework, called the “Risk and Protective Factor Framework,” has been developed by University of Washington researchers:

Developments in prevention and intervention science have shown that there are underlying characteristics of individuals and their families and their environment (i.e., community neighborhood, school) that affect the likelihood of negative outcomes including substance abuse, delinquency, violence, school dropout, teen pregnancy, and depression or anxiety. Other characteristics serve to protect or provide a buffer to moderate the influence of the negative characteristics. These characteristics are identified as risk factors and protective factors.¹⁰

Further, there is strong evidence published by the Washington State Institute for Public Policy that programs focused on addressing underlying risk and protective factors for later problem behavior provide a net savings to tax payers. For example, they calculate that for one program called Life Skills Training, every dollar invested in the program produces approximately \$38 in savings from preventing future drug and cigarette use and crime, and increasing high school graduation.¹¹

⁷ *Research Support for Comprehensive Community Interventions to Reduce Youth, Alcohol, Tobacco and Drug Use and Abuse* (2010), available at (<http://www.cadca.org/files/resources/ResearchSupport-4-ComprehensiveInterventions-09-2011.pdf>).

⁸ *Preventing Mental, Emotional, and Behavioral Disorders Among Young People* (2009), available at (http://www.nap.edu/catalog.php?record_id=12480).

⁹ *What is Public Health?*, available at (http://www.apha.org/NR/rdonlyres/C57478B8-8682-4347-8DDF-A1E24E82B919/0/what_is_PH_May1_Final.pdf).

¹⁰ *Risk and Protective Factor Framework* (Hawkins, Catalano, Miller, 1992), available at (<http://www.hsd.state.nm.us/Synar/pdf/Hawkins%20and%20Catalano%20Risk%20and%20Protective%20Factor%20Framework.pdf>).

¹¹ Washington State Institute for Public Policy, *Return on Investment: Evidence-Based Options to Improve Statewide Outcomes*, available at (<http://www.wsipp.wa.gov/rptfiles/12-04-1201.pdf>).

The Risk and Protective Factor Framework focuses not just on individuals or communities, but on multiple environments such as schools, families, communities, peer groups, as well as individuals. It also acknowledges that preventing unhealthy behavior relies not just on identifying and eliminating risk factors, but also on identifying and strengthening protective factors, such as having a healthy home environment. The University of Washington's Social Development Research Group has become a world leader in putting this framework into practice.¹²

As the Board creates the rules that will shape the I-502 marketplace, it should be mindful of the risk and protective factors that will be influenced by its decisions.

Prevention/Public Health Programs Can Only Protect Our Communities If They Are Funded. I-502 dedicates a percentage of the anticipated tax revenue from the sale of marijuana for specific public health related purposes. It is important that these funds are not repurposed for other programs. As we've seen with the tobacco settlement dollars intended to fund public health education and smoking prevention and intervention efforts, lawmakers have repeatedly diverted these funds to unrelated purposes.¹³ Here in Washington, state funding for tobacco prevention has been significantly reduced in recent years.¹⁴ In the absence of counter-messaging to balance against tobacco marketing, public health loses.

Although it is beyond the purview of the Board either to protect or redirect I-502 disbursements, it is important that all stakeholders involved with implementation and enforcement of I-502 advocate for full funding of the measure's public health features.

¹² Social Development Research Group website, available at (<http://www.sdrp.org/mission.asp>).

¹³ *Where Tobacco Settlement Funds Really Went*, available at (<http://abcnews.go.com/GMA/story?id=125919&page=1>).

¹⁴ *Tobacco Prevention Program Newsletter - July 2011*, available at (<http://www.kingcounty.gov/healthservices/health/tobacco/facts/budgetelimination.aspx?print=1>).

Resources

The following resources describe and assess the effectiveness of various prevention, treatment, and public health strategies utilized in response to marijuana use and in other contexts. These resources specifically relate to issues the Board must address through I-502 rulemaking.

Prevention in General

- University of Washington – Social Development Resource Group - homepage (<http://www.sdrp.org/index.asp>) and resource page (<http://www.sdrp.org/prevention.asp>).
- Washington State Prevention Enhancement Policy Consortium – *Substance Abuse Prevention and Mental Health Promotion Five-Year Strategic Plan* (<http://www.theathenaforum.org/sites/default/files/SPE%20Strategic%20Plan%20FINAL%20-%20v.%208.10.12.pdf>).
- National Research Council and Institute of Medicine – *Preventing Mental, Emotional, and Behavioral Disorders Among Young People* (http://www.nap.edu/catalog.php?record_id=12480).
- Office of the Surgeon General – *National Prevention Strategy* (<http://www.surgeongeneral.gov/initiatives/prevention/strategy/report.html>).

Marijuana

- RAND – webcast on “Public Health Regulations for Marijuana Legalization” (<http://www.c-span.org/Events/RAND-Corp-Holds-Discussion-on-Public-Health-Effects-of-Marijuana/10737437957-1/>).
- University of Washington - Innovative Programs Research Group (<http://depts.washington.edu/iprg/index.html>).
- SAMHSA – National Registry of Evidence Based Programs and Practices - Marijuana (<http://nrepp.samhsa.gov/SearchResultsNew.aspx?s=b&q=marijuana>).
- Norberg MM, Kezelman S, Lim-Howe N, *Primary Prevention of Cannabis Use: A Systematic Review of Randomized Controlled Trials*. PLoS ONE 8(1): e53187 (<http://dx.plos.org/10.1371/journal.pone.0053187>).
- RAND – Drug Policy Research Center: Marijuana Legalization: (<http://www.rand.org/multi/dprc/marijuana.html>).
- RAND – *Marijuana Legalization: What We Know and What We Don’t Know* - Congressional Briefing, November 2012 (<http://www.rand.org/multimedia/video/2012/07/17/marijuana-legalization.html>).

- RAND – *What Can We Learn from the Dutch Cannabis Coffeeshop Experience?* (http://www.rand.org/content/dam/rand/pubs/working_papers/2010/RAND_WR768.pdf).

Tobacco

- Centers for Disease Control and Prevention – *Best Practices for Comprehensive Tobacco Control Programs – 2007* (http://www.cdc.gov/tobacco/stateandcommunity/best_practices/index.htm).
- Office of the Surgeon General – *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General, 2012* (<http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/index.html>).

Alcohol

- Office of the Surgeon General – *Surgeon General’s Call to Action to Prevent and Reduce Underage Drinking* (<http://www.surgeongeneral.gov/library/calls/underagedrinking/index.html>).
- National Institute on Alcohol Abuse and Alcoholism – Alcohol Policy Information System (<http://alcoholpolicy.niaaa.nih.gov/>).
- Underage Drinking Enforcement Training Center (<http://www.udetc.org/Publications.htm>).
- John Hopkins School of Public Health – Center on Alcohol Marketing and Youth (<http://www.camy.org/>).